

Award No. 10205

Docket No. PM-11105

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Walter L. Gray, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: " * * * for and in behalf of W. Banks, who is now, and for some years past has been, employed by The Pullman Company as a porter operating out of the District of St. Louis, Missouri.

Because The Pullman Company did, under date of January 13, 1959, take disciplinary action against Mr. Banks by suspending him from the service for one round trip in his regular assignment from 12:45 P. M. January 16, 1959, to 12:45 P. M. January 21, 1959.

And further, because the charges upon which the discipline was based were not proved beyond a reasonable doubt as is provided for under the rules of the Agreement governing the class of employes of which Mr. Banks is a part; therefore, the penalty imposed was unjust, unreasonable, and in abuse of the Company's discretion.

And further, for the record of Porter Banks to be cleared of the charges in this case, and for him to be reimbursed for the pay lost as a result of his having been unjustly penalized."

OPINION OF BOARD: This is a discipline case in which Porter W. Banks was charged with failure to prepare Roomette 4 on a train between St. Louis and Baltimore.

It is the contention of the complainant that no written complaint was ever filed and that the only evidence was a form prepared by a Pullman Conductor. That this report was based on hearsay and not admissible.

The petitioner further contends that Company's action in the suspension of Porter Banks was in abuse of the Company's discretion unreasonably and the penalty imposed was unjust.

The position of the Carrier is that this porter from 12:45 P. M. until 1:45 P. M. was to perform certain preparatory and preliminary duties and that he had ample time to note what beds had been set up for night occupancy.

Much emphasis is made by the complainant that no call was ever made by the passenger to make up his bed and that there was a call bell the passenger might have used.

However, in the long hearing, which is a part of the record, there is ample evidence to sustain the position that the porter knew that this Roomette had not been prepared. He excused his neglect to do so on the grounds he did not want to disturb the passenger. But it is hardly likely that a Porter with 35 years of experience would not make some effort to see that this Roomette was in order. His statements at the hearing were certainly an admission of neglect on his part and with his own statements he cannot now complain that he was punished unjustly.

We can find no justification to interfere with the action of the Carrier or find that there was an abuse of the discretion given the Carrier under the Agreement between said parties.

Therefore the Claim is denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1961.